

STATE OF TENNESSEE
OFFICE OF THE
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August 10, 2004

Opinion No. 04-125

Authority of School Board to Hold Referendum on County Property Tax Rate

QUESTION

Does the Clarksville-Montgomery County Board of Education have authority to call for a referendum election on the question of the appropriate property tax rate in Montgomery County pursuant to Section 10 of the Unification Plan for the Clarksville-Montgomery County School System?

OPINION

No. The Clarksville-Montgomery County Board of Education lacks authority to hold a referendum to establish Montgomery County's property tax rate.

ANALYSIS

In 1994, the Attorney General's Office opined that "[a]ll counties . . . must follow the general law concerning the setting of the county property tax rate, which does not allow for submitting a rate increase to the voters" by referendum. Op. Tenn. Att'y Gen. No. 94-008 (Jan. 14, 1994). In support of this opinion, we explained:

Article II, Section 29 authorizes the General Assembly to delegate the power of property taxation to counties and cities. The General Assembly has implemented this provision by a general statute applicable to all counties, T.C.A. § 67-5-102, and which states that the amount of the tax is to be fixed by the county legislative body. T.C.A. § 67-5-510 further specifies the time at which such property tax rates are to be set by the county commissions. Numerous other code provisions specify the precise manner in which county property taxes are to be levied and administered, all under the oversight of the State Board of Equalization. T.C.A. §§ 67-5-1501 *et seq.* Imposition of a requirement of a public referendum to increase the property tax rate is not permitted under any of these statutes and

would be fundamentally inconsistent with their provisions. Such a referendum requirement would thus violate the general law applicable to all 95 counties.

In conclusion, our current statutes require the county property tax rate to be set annually by the county commission. The requirement of a public referendum for a rate increase would conflict with the general statutes and be invalid.

Op. Tenn. Att’y Gen. No. 94-008 (Jan. 14, 1994). Relying on these principles, this Office concluded that a county could not amend its charter to require that increases in the property tax rate be approved by referendum. *Id.*

The 1994 opinion was consistent with a previous Attorney General opinion, issued in 1981, which similarly indicated that a county could not hold a referendum to establish the county property tax rate, even where a private act of the Legislature purported to authorize such a referendum. In the 1981 opinion, we explained:

T.C.A. § 67-1004 [now § 67-5-510] presently provides that “[i]t shall be the duty of the county courts on the first Monday in July, or as soon thereafter as practicable, to fix the tax rates on all properties within their respective jurisdiction for all county purposes.” It is clear that a private act allowing the Sumner County Commission to call a binding referendum that would establish the property tax rate in Sumner County conflicts with T.C.A. § 67-1004, which requires all county commissions across the State to establish the property tax rate on the first Monday in July, or as soon thereafter as practicable.

Op. Tenn. Att’y Gen. No. 81-571 (Oct. 21, 1981). Conceiving of no reasonable basis for this discrimination, this Office opined that a private act authorizing such a referendum in Sumner County would constitute a suspension of the general law in violation of Article XI, Section 8, of the Tennessee Constitution. *Id.*

We continue to adhere to the views expressed in the foregoing opinions. Tenn. Code Ann. §§ 67-5-102, 67-5-510, and numerous other code provisions specify the manner in which county property taxes are to be levied and administered. Op. Tenn. Att’y Gen. No. 94-008 (Jan. 14, 1994). Section 10 of the Unification Plan, which authorizes the Clarksville-Montgomery County Board of Education to initiate a referendum election to determine whether additional taxes shall be levied to fund the school budget, is fundamentally inconsistent with the statutes requiring the county property tax rate to be set annually by the county commission. Just as a referendum provision contained in

a county charter is ineffective to avoid application of the general law, the referendum provision contained in Section 10 of the Unification Plan is likewise invalid.

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